Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

79-1896

No. ——

ARKANSAS LOUISIANA GAS COMPANY, *Petitioner,*

v.

FRANK J. HALL, W. E. HALL, JR., MRS. W. E. HALL, SR., THE H. M. HARRELL TESTAMENTARY TRUST, JAMES E. HARRELL, JOHN K. HARRELL, SR., ASA BENTON ALLEN, SIDNEY G. MYERS, JR., W. O. COCHRAN, THOMAS F. PHILYAW, MRS. ELAINE ALLEN, JAMES A. NOE, D. B. MCCONNELL, MRS. EVA L. WEISS, SOL KAPLAN and NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

ROBERT ROBERTS, JR.
MARLIN RISINGER, JR.
W. MICHAEL ADAMS
BLANCHARD, WALKER, O'QUIN & ROBERTS
Post Office Drawer 1126
Shreveport, Louisiana 71163

Counsel for Petitioner.

Of Counsel:

REUBEN GOLDBERG
GLENN W. LETHAM
GOLDBERG, FIELDMAN & LETHAM, P.C.
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

ARKANSAS LOUISIANA GAS COMPANY prays that a Writ of Certiorari issue to review the judgment and decree of the Court of Appeal, Second Circuit, State of Louisiana, entered in this cause on January 22, 1980,[1] affirming the judgment of the First Judicial District Court of Louisiana in and for Caddo Parish rendered on May 17, 1979.

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[1] The Supreme Court of Louisiana on May 2, 1980 denied a petition to review this judgment.

I. OPINION BELOW

A copy of the opinion and decree of the Court of Appeal to which this petition is addressed is an appendix to this petition, at page 105a; it is reported at 379 So.2d 1142. Petitioner filed an application to the Court of Appeal for rehearing which was denied by order entered on February 29, 1980; see App. p. 118a.

Petitioner timely applied to the Supreme Court of Louisiana for a writ of certiorari, or review, of the judgment of the Court of Appeal, which was denied by an order entered May 2, 1980 (App. p. 119a). Upon such denial the judgments of the Court of Appeal in the suit and of the First Judicial District Court of Louisiana, so far as concerns the law of Louisiana, became final and executory.

On May 9, 1980, the Supreme Court of Louisiana entered an order herein staying the execution of the judgment in the suit pending the filing and prosecution of this petition for certiorari; see App. p. 120a.

The First Judicial District Court filed no opinion as to the matter here at issue; its judgment against Petitioner and in favor of the Respondents severally, aggregating about $2,700,000 plus interest, was entered May 17, 1979; App. p. 121a.

Earlier opinions in the suit in the courts of Louisiana are as follows:

> Opinion and decree of the Court of Appeal, Second Circuit, State of Louisiana, App. 986, p. 2a,[2] reported at 359 So.2d 255, May 1, 1978.

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[2] As explained below (see "Questions Presented," p. 4), there are pending in this Court two earlier petitions for certiorari, Nos. 78-986 and 78-1789; the appendices in the two suits will be referred to herein as "App. 986, p. —," and "App. 1789, p. —." Appendix references in this petition are to "App. p. 104a," et seq.

Orders of the Court of Appeal denying applications of Petitioner and of Respondent, for rehearing, App. 986, p. 21a, June 6, 1978.

Order of the Supreme Court of Louisiana denying Petitioner's application for review of the judgment of the Louisiana Court of Appeal, App. 986, p. 22a, September 22, 1978.

Order of the Supreme Court of Louisiana granting Respondents' application for review of the judgment of the Louisiana Court of Appeal, App. 986, p. 23a, September 22, 1978.

Opinion of the First Judicial District Court of Louisiana in and for Caddo Parish, App. 986, p. 24a, October 14, 1977.

Opinion of the district court denying new trial, App. 986, p. 39a, December 2, 1977.

Judgment of the trial court, App. 986, p. 44a, December 5, 1977.

Opinion and decree of the Supreme Court of Louisiana reversing the May 1, 1978 decree of the Court of Appeal, App. 1789, p. 83a, 368 So.2d 984, March 5, 1979.

Order of the Supreme Court of Louisiana, April 9, 1979, denying rehearing of the decree of March 5, 1979, App. 1789, p. 100a.

II. JURISDICTION

The judgment of the Court of Appeal was entered January 22, 1980, rehearing was denied on February 29, 1980, and under the laws of the State of Louisiana became final when the Supreme Court of Louisiana on May 2, 1980 declined to review the judgment.

The judgment of the Court of Appeal, Second Circuit, State of Louisiana, of which review and reversal are here sought is, under the judicial and procedural systems of Louisiana, a judgment of the highest court of the State of Louisiana in which a decision in this cause could be had. The judgment also is final, within the meaning of the jurisdictional statute, *United States Code,* Title 28, Sec. 1257(3), App. p. 104a.

III. QUESTIONS PRESENTED

The money judgment of which reversal is here sought is the culmination of a procedurally complicated suit, two parts of which are already pending in this Court. In No. 78-986, Petitioner seeks review and reversal of an earlier judgment of the Louisiana Court of Appeal which decided against Petitioner questions of administrative jurisdiction and priority, as well as of liability, and remanded the suit to the trial court on questions of quantum; this Court denied certiorari on October 1, 1979, and after three orders of this Court extending the time for filing petition for rehearing (on October 25, 1979, January 29, 1980, and March 29, 1980) Petitioner, simultaneously with the filing of the present petition, is filing a petition for rehearing of the denial of certiorari in No. 78-986. In No. 78-1789, Petitioner seeks reversal of a judgment of the Supreme Court of Louisiana adjudging liability.

Petitioner submits that, as matters of logic and law, the money judgment here complained of incorporates the erroneous rulings of the Louisiana courts of which Petitioner complains in No. 78-986 and No. 78-1789. We therefore restate here the questions presented in our earlier petitions as well as the question unique to the judgment of which complaint is here made.

(1) Whether the court below erred in failing to refer to the Federal Power Commission ("Commission")[3] the interpretation of the favored nation provision of Respondents' Rate Schedule, whether the favored nation provision was activated, and, if the favored nation provision were activated, the prices that Respondents may collect under the *Natural Gas Act* and the Regulations thereunder.

(2) Whether the Court of Appeal's judgment as to the Small Producer status of Respondents and the computation of their recovery was in accordance with the *Natural Gas Act* and Commission Regulations.

(3) Whether the Supreme Court of Louisiana erred as a matter of jurisdiction and of law in awarding Respondents, as damages for breach of contract, a retroactive price increase for their natural gas sold to Petitioner in interstate commerce for resale, higher than the Respondents' rate on file with the Commission in accordance with the *Natural Gas Act* and Regulations thereunder based upon that court's holding that state law excused Respondents from compliance with federal law and that the Commission would have approved the higher rate had it been filed.

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[3] Under the Department of Energy Organization Act, 42 U.S.C. 7172(a)(1)(C), (D), (E), and (F), the Federal Energy Regulatory Commission ("F.E.R.C.") succeeded to the relevant functions and responsibilities of the former Federal Power Commission ("F.P.C.") on October 1, 1977. The term "Commission" refers to the F.P.C. or the F.E.R.C. as the context indicates.

(4) Assuming a decision adverse to Petitioner on the foregoing three questions, whether the Louisiana courts' determination of the price of gas sold by Respondents to Petitioner under their Rate Schedule exceeds the price permitted under the Commission's Regulations promulgated pursuant to the *Natural Gas Act* and as such is unconstitutional and unlawful.[4]

IV. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Supremacy Clause of the United States Constitution is involved in this proceeding. U.S. Const., Art. VI, Clause 2; App. p. 104a. The federal statute involved is Section 4 of the *Natural Gas Act,* 52 Stat. 822, 15 USC Sec. 717c, and Regulations thereunder of the Commission, *Code of Federal Regulations,* Title 18, Secs. 154.92, 154.93, 154.94, 154.95, 157.40, copies of which are at App. 986, pp. 52a, 54a, 55a and 60a.

Also involved is the *Other Southwest Area Rate Order* of the Commission, *Code of Federal Regulations,* Title 18, Part 154.109a, as added by Commission Opinion No. 607, 46 F.P.C. 900 at page 925 (1971), copy of which is at App. p. 125a.

V. STATEMENT OF THE CASE

We make here a very summary statement of the case and refer the Court to Petitioner's two preceding petitions for certiorari, No. 78-986 and No. 78-1789, for a more detailed description of the case.

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[4] Questions 1 and 2 are specified in No. 78-986 and Question 3 is specified in No. 78-1789. They are also specified here although they are not reargued.

The suit was filed in a Louisiana court in 1974 by Respondents, sellers under a gas sales agreement made with Petitioner in 1952, claiming additional price under an escalation provision of the contract (a "favored nation clause"), which provided it was to be activated if the buyer made purchases from another seller of gas from the same field at a higher price under similar conditions. See Pet. in No. 78-986, pp. 5-6.

In 1961 Petitioner ("Arkla") began production of oil and gas from wells in the Sligo Field drilled on lands owned by the United States and covered by a gas lease held by Arkla and others. Under the lease the government was entitled to a sixth of the value of the product (a value royalty) or at its option to have a sixth of the product in kind. In the case of payment of a value royalty, the United States retained the right to determine the value.

The United States elected to take a value royalty and determined the value at a rate per unit of gas higher than the price per unit of gas then being paid under Arkla's gas purchase contract with Respondents.[5] The trial court, construing the lease, held that the United States owned the product, was selling it to Arkla and that the favored nation clause was thereby triggered; it granted a judgment for the sellers during the period while Respondents, as it held, were "small producers" under the regulations of the Commission and excused Respondents by such regulations from the necessity of filing for the higher rates with the Commission under the *Natural Gas Act.*

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[5] The government also made determination of the value of the production of liquid hydrocarbons.

On appeal the Louisiana Court of Appeal overruled Arkla's contention that the question of interpretation of Respondents' Rate Schedule should have been referred to and decided by the Commission. Although overruling the holding of the district court, that the royalty settlement was a purchase of gas, the appeal court held that the favored nation clause should be construed liberally in favor of the sellers (rather than as appeared to be required by the decisions of this Court, in favor of the gas utility buyer, and thus the consumers of gas) and that, if construed liberally, the words "purchase from another party seller" were broad enough to include payment of value royalty by a mineral lessee.

The court of appeal reversed the district court's judgment as to quantum and remanded the case for the determination of the amount of the judgment, not being satisfied with the calculations of the district court brought before it.

The Supreme Court of Louisiana refused to review that part of the court of appeal's judgment adverse to Arkla and its petition to this Court in No. 78-986 followed. However, that court granted review to Respondents as to that part of the judgment of the court of appeal disqualifying Respondents for the higher price during the time their higher rate had not been on file with the Commission. The court treated the requirements of the *Natural Gas Act* as a contract condition and held that performance would be excused because Respondents were not aware of the government royalty settlement, and thus were prevented from performing the "condition." It also remanded the case to the trial court for a determination of quantum under the rules announced in its opinion.

Respondents, notwithstanding the fact that serious questions of liability were pending in this Court, set the case for trial in the Louisiana district court on remand. The Louisiana courts have uniformly held in this case that Respondents were entitled to an addition to the price already paid in an amount sufficient to bring that price to the level of the unit values paid as royalty to the United States, but have recognized that the contract increases are limited by the Commission's maximum prices. App. 986, p. 36a; App. 1789, p. 94a.

The new trial and the appeal to the court of appeal and on certiorari to the Louisiana Supreme Court involve solely Petitioner's contention that the prices sought by Respondents were substantially higher than the price then permitted by the Commission for similar sales and, therefore, unlawful.[6] The dispute centers on a provision of Section 8(B) of the contract which provided that,

> "The prices hereinabove in this Section 8 provided to be paid by Buyer to Seller shall constitute full payment for all gas delivered hereunder and also for all liquifiable hydrocarbons and other products delivered with such gas, it being understood and agreed that any and all products whatsoever recovered or recoverable from the production delivered hereunder by means of any type of processing operation subsequent to delivery shall be the property of Buyer or its assign without any obligation to make further payment to Seller for such products . . . . The parties take cognizance of the fact that the aforesaid prices hereinabove provided to be paid are $0.0025 per

[6] The question of liability *vel non* was not open to Petitioner in the proceedings on remand.

> MCF higher than would have been provided had Seller retained the right to participate in the recovery of products by such processing operations. . . ."

The favored nation escalation provision of the contract went on to state that "in determining whether a given price is in fact higher than the price provisions of this contract, the inquiry shall not be limited to the actual prices stipulated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts . . . ."

Arkla was required by the government in its royalty settlements, in addition to the royalty of 1/6 of the value of the dry gas, to pay a royalty of 1/6 of the value of liquid hydrocarbons extracted from the gas, without any allowance for the cost of extraction. The combination of the two factors of the value of the dry gas and the value of the extracted liquid gave a per Mcf rate for the production from the government lease, gas and liquids, almost double the permissible ceiling rates being allowed at the time by the Commission for wellstream gas.

In the district court Arkla tendered a "Motion to Reopen Record" (App. p. 134a) and a "Statement of Defendant Setting Forth a Summary of Evidence Sought to be Admitted on New Trial" (App. p. 137a), none of which was allowed by the trial court but which was received in the record as a proffer of proof. In further demonstration of Petitioner's reliance on rights under the *Natural Gas Act*, which were denied to it by the Louisiana courts, we quote one of Petitioner's two specifications of error in the court of appeal:

> "The District Court erred in awarding to Plaintiffs a money judgment entitling the Plaintiffs to

> a retroactive per Mcf price increase greatly in excess of the applicable area ceiling rates established by the Federal Energy Regulatory Commission under the *Natural Gas Act,* and in refusing to allow Defendant to adduce testimony to that effect on remand of the case to the District Court."

Likewise, in applying to the Supreme Court of Louisiana for review of the decree of the court of appeal, the only assignment of error specified by Petitioner was as follows:

> "The Court of Appeal erred in affirming the district court's award to plaintiffs of a money judgment entitling the plaintiffs to a retroactive per Mcf price increase greatly in excess of the applicable area ceiling rates established by the Federal Energy Regulatory Commission under the *Natural Gas Act,* and in refusing to allow defendant to adduce testimony to that effect on remand of the case to the district court."

VI. REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

A. The January 22, 1980 judgment of the Louisiana Court of Appeal underscores the multiple errors committed by the Louisiana courts, both as a matter of jurisdiction and law, in attempting to interpret Respondents' Rate Schedule and in awarding Respondents a rate increase. These matters involve the primary and exclusive jurisdiction of the Commission. *Colorado Interstate Gas Co.* v. *F.P.C.,* 324 U.S. 581 (1945); *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.,* 341 U.S. 246 (1951); *Northern Natural Gas Co.* v. *Kansas Corporation Commission,* 372 U.S. 84 (1963); *F.P.C.* v. *Louisiana Power & Light Co.,* 406 U.S. 621 (1972); *California* v. *South-*

land Royalty Co., 436 U.S. 519 (1978); *Ashland Oil & Refining Co.* v. *F.P.C.*, 421 F.2d 17 (6th Cir. 1970); *Socony Mobil Oil Co.* v. *Brooklyn Union Gas Co.*, 299 F. 2d 692, 695 (5th Cir. 1962), cert. den. 371 U.S. 887 (1962); *Texas Oil & Gas Corp.* v. *Valley Gas Transmission, Inc.*, 608 F.2d 231 (5th Cir. 1979).

This Court has held that only the Commission may set rates for the sale of natural gas for resale in interstate commerce. *Montana Dakota Utilities Co.* v. *Northwestern Public Service Co.*, supra; *Northern Natural Gas Co.* v. *Kansas Corporation Commission*, supra. The Commission has exclusive rate jurisdiction over such sales of natural gas in interstate commerce. Id. The Commission also has primary jurisdiction over interstate gas contracts on file with it as jurisdictional rate schedules. *F.P.C.* v. *Louisiana Power & Light Co.*, supra; *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Texas & Pacific R. Co.* v. *American Tie & Timber Co.*, 234 U.S. 138 (1914); *United States* v. *Western Pacific R. Co.*, 352 U.S. 59 (1956); *Far Eastern Conference* v. *United States*, 342 U.S. 570 (1952); *United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U.S. 474 (1932). The Louisiana courts' jurisdictional errors have been compounded by their erroneous substantive determinations. These errors include (1) an interpretation of Respondents' Rate Schedule which contravenes federal regulatory law and general contract law [7] and (2) the award of rate increases which violate the "filed rate doc-

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[7] *Mobil Oil Corp.* v. *F.P.C.*, 463 F.2d 256 (D.C. Cir. 1971), cert. den. sub nom *Mobil Oil Corp.* v. *Matzen*, 406 U.S. 976 (1972); Pet. for Reh., No. 78-986 (May 30, 1980).

trine"[8] and the ceiling rates prescribed by the Commission under the Natural Gas Act.[9] These errors are interrelated inasmuch as the state courts' interpretation of Respondents' contract and misunderstanding of federal rate regulation have resulted in the excessive rates complained of in this petition.

The Louisiana Court of Appeal's decision of January 22, 1980 confirms what Petitioner has shown before as reasons why certiorari should be granted in this case. The petitions for writs of certiorari in this case and in Nos. 78-986 and 78-1789 should be granted in order to vindicate the supremacy of federal regulation over state law and in order to protect against similar future incursions by the state courts into areas preempted by federal statute and involving pervasive federal regulation. *Northern Natural Gas Co.* v. *Kansas Corporation Commission,* supra. Indeed, the excessive rates awarded by the state courts should be invalidated by this Court because the ceiling rates established by the Commission under the *Natural Gas Act* are "paramount" under the Supremacy Clause of the Constitution. Id.

In the remainder of this petition, we shall demonstrate beyond cavil that the rate increases awarded by the Louisiana courts, when added to the existing rates, exceed the applicable Commission ceiling rates.

B. The Louisiana Court of Appeal held that Respondents' sale to Arkla was of raw, unprocessed natural gas at wellhead and contained the gaseous con-

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[8] *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, supra; Pet. in No. 78-1789.

[9] *Northern Natural Gas Co.* v. *Kansas Corporation Commission*, supra.

stituents thereof which were extractable as liquid hydrocarbons. In its opinion (App. p. 108a) the court said:

> "Under the 1952 gas purchase contract with plaintiffs, Arkla purchased 'production from all wells . . . completed as commercially productive of natural gas' subject to the several terms and conditions of the contract. Section 8 of the contract, subpart D of which contains the most favored nation clause, stipulated the price to be paid for each Mcf of gas delivered to Arkla, but recognized that the stipulated price included an additional $.0025 per Mcf to compensate the seller for the surrender of rights to receive the value of the LHC extracted by processes *after* delivery to Arkla." (Emphasis by the court.)

After quoting in its opinion (App. pp. 109a-10a) the relevant parts of Section 8 of the gas sales contract, the court stated (App. p. 112a) that "... the fact [is] that a portion of the stipulated *Mcf price for gas* under the 1952 contract (¼¢) was for LHC ..." (Emphasis added.) The court said (App. p. 114a):

> "... In the 1952 contract, *gas* includes LHC and the price provisions of the contract *provide a price for both.*" (Emphasis added.)

The following is also quoted from the court's opinion (App. p. 116a):

> "... In effect Arkla paid the Government and the plaintiffs for *wet* gas. The eventual price was determined by the Mcf after extraction of LHC and by the price for the LHC. *The price plaintiffs received for its gas* after extraction of LHC and for the LHC was less than what the government received." (Emphasis added.)

The court said (App. p. 117a):

> "... *Gas* in the 1952 contract includes the LHC." (Emphasis by the court.)

C. The court of appeal's opinion passed only on the interpretation of the contract, and did not address Petitioner's argument and specification of error that the court was granting a price increase unlawful under the *Natural Gas Act*. The court held that the issue on the appeal was one of contract interpretation and sufficiency of evidence, saying in its opinion (App. p. 108a):

> "The central issue in this appeal involves the sufficiency of the evidence used in comparing the difference in the price provisions of the two contracts, one contract being the gas purchase contract in 1952 containing the favored nation clause, and the other being the lease contract with the United States of America in 1961, payments under which have been construed as activating the favored nation clause of the other contract."

The following is quoted from the court's opinion (App. p. 112a):

> "... The crux of this case is not that plaintiffs sold wet gas, but consideration of the purpose of the favored nation clause, the fact that a portion of the stipulated MCF price for gas under the 1952 contract (¼ cent) was for LHC, and the decisions of state and federal authorities in this controversy that the price Arkla paid the United States for LHC is a 'pertinent factor' to be used under Section 8 of the 1952 contract in interpreting the favored nation clause and in determining the difference in the price provisions of the two contracts. The price provisions can be and have been compared."

The court said (Id.):

> "Again we determine that for the purpose of giving effect to the favored nation clause—section 8 of the contract, the higher price the United States began to receive from Arkla in 1961 for gas and for LHC is the basis upon which to assess and measure the amounts plaintiffs should have begun to receive monthly from Arkla in 1961 for its gas and LHC."

The court further stated (App. p. 113a):

> "We reiterate that the purpose of the favored nation or price adjustment clause is to protect the seller under a long-term contract from price discrimination. A contract with favored nations provisions should be interpreted broadly, and not restrictively, to fully effect the provisions."

Later the court stated (App. p. 116a):

> ". . . On the *basic contract question* (to use terminology frequently used by FERC) the effect of the lower court's finding, which we again approve, is that the contract shall be interpreted to entitle these plaintiffs to damages measured by what Arkla paid the United States for its gas *and for LHC products severed from its gas.*" (Emphasis added.)

The appeal court's opinion is concerned exclusively with a demonstration that Respondents, as a matter of contract interpretation and evidence, are entitled to the prices found.

D. Respondents concede that their recovery in this case is limited by the maximum price orders of the Commission, specifically FPC Opinion No. 607 (September 21, 1971), as modified by Opinion 607-A (January 17, 1972) which, however, did not change Opinion No. 607 in any way material to this suit.

In fact Respondents introduced the controlling rate order, Opinion No. 607, in evidence as Exhibit P-340 and quoted from it at page 57 of their original brief, although in tabulating the maximum area prices, Respondents failed to quote that part of Opinion No. 607 which requires a reduction of 1¢ per Mcf from the price otherwise established for gas in Northern Louisiana, where the gas is delivered at wellhead. Opinion 607 is not only in evidence in this case, it is reported in Commission Reports Volume 46, at pages 900 to 983; and the relevant parts of the opinion (pages 923 to 930) are in the Appendix, beginning at page 125a.

It is necessary, in order to determine the maximum lawful price for any given sale of gas in North Louisiana, to understand the structure of Opinion 607: the ordering paragraph is numbered 154.109a beginning on page 923. Subpart (A), Subsections (a), (b) and (c) prescribe rates for gas to be sold in the future, beginning January 1, 1972. Subsection (c)(3) is as follows:

> "The applicable area rate shall be adjusted downward, for gas delivered closer to the wellhead than a central point in the field, the tailgate of a plant, a point on buyer's pipeline, or an offshore platform on the buyer's line by the following:
>
> . . .
>
> Northern Louisiana and
> Southern Arkansas ---------- 1.0¢ per Mcf"

Subsection (d) prescribes quality standards and adjustments to the base rate, with which we need not be concerned here.

The subsections just described are of minor importance in this suit, as they cover only the last year or

two of the period with which we are here concerned. Subpart (B) of the ordering part of Opinion 607 is the legal requirement with which we are here concerned. Recalling again that Opinion 607 was decided in 1971, effective in 1972, its effect on gas already sold at varying prices under suspension orders which left open ultimate prices to be collected was derived from the Commission's order, in Subpart (B), that prices already collected under suspension orders be adjusted by the payment of refunds by the producer, and we quote Subpart (B) as follows:

> "(B) For the purpose of computing refunds in all Section 4(e) proceedings now pending with respect to gas produced in the Other Southwest area, the following base area rates (at 14.65 psia unless otherwise noted) are hereby established, for gas gathered and delivered by the seller at either a central point in the field, the tailgate of a plant, or a point on the buyer's pipeline . . . ."

Immediately following the paragraph just quoted is the detailed description of prices; the first is the one which governs the gas sold by Respondents to Petitioner as follows:

> "(1) Gas sold under contracts dated prior to January 1, 1961:

	Prior to Jan. 1, 1965	From Jan. 1, 1965, through Sept. 30, 1968	From Oct. 1, 1968
. . . .			
Northern Louisiana (at 15.025 psia)	16.7	18.6	20.6
. . . .			
. . . .			

> (4) The applicable area rate shall be adjusted downward, for gas delivered closer to the wellhead than a central point in the field, the tailgate of a plant, or a point on the buyer's pipeline in the same amounts provided in such cases in paragraph (c)(3) of Section 154.109a [quoted above, which reduces the price for wellhead deliveries by 1¢ per Mcf] as added by ordering paragraph (A) hereof, to Part 154 of the Commission's Regulations under the Natural Gas Act and shall be subject to the same quality standards and adjustments as provided by paragraph (d) of said Section 154.109a."

We submit that the Commission in its regulations which we have analyzed and quoted here made it reasonably clear, in establishing prices for thousands of transactions with an almost infinite variation of detail, what the maximum prices should be.

For North Louisiana gas sold in interstate commerce in the period beginning in 1961, the lawful maximum price was retroactively fixed in 1971 for wellhead deliveries (with which we are dealing here) at 1¢ below the prices given in the tabulation last quoted.

It is of no assistance to Respondents to point out, as they have many times done in this litigation, that the Commission has no jurisdiction over the sale of extracted liquids because this case does not involve extracted liquids, but involves, as the court of appeal has specifically held, the sale of gas before the liquids are extracted. As the Commission Examiner said in *El Paso Natural Gas Co.*, 29 F.P.C. 1175, 1207 (1963):

> ". . . What is sold and delivered under these contracts is not liquid hydrocarbons at all, but it is natural gas, all of which is delivered at the

mouth of the well or at the outlet of the separator (if one is installed at the wellhead)."

The United States Supreme Court has approved this approach by the Commission in *Permian Basin Area Rate Cases,* 390 U.S. 747, 819-20 (1968). The fact that the court has interpreted the favored nation clause of the contract involved here as requiring an adjustment in the gas price to give Respondents the equivalent of the payments for extracted liquids made to the United States under the lease, as the court of appeal has held (App. p. 112a), is of no consequence in determining the amount to which Respondents are entitled. Their recovery is limited by the area maximum rate, as described above.

To show the extent to which the district court exceeded these lawful maximum prices, we have taken from the exhibits in the case a year's sales by H. M. Harrell (in 1962), which, on analysis, show the unlawful payment ordered as follows:

Per Mcf price paid by Arkla for wellhead gas (with entrained liquefiable hydrocarbons) delivered (Ex. P-1)	$ .087970
Per Mcf price increase awarded in judgment (Ex. P-322-I)	.090064
TOTAL per Mcf price awarded in judgment	$ .178034

Per Mcf Natural Gas Act ceiling rate for wellhead gas (with entrained liquefiable hydrocarbons) delivered (FPC Opinions 607 and 607-A, Ex. P-340)	$ .157000
Per Mcf amount awarded in excess of ceiling and in violation of Natural Gas Act	$ .021034
Volume produced during 1962 attributable to H. M. Harrell Interests (Ex. P-322-I, col. 2)	1,380,301 Mcf
TOTAL amount awarded for 1962 sales in violation of Natural Gas Act ceilings (volume times excess price awarded)	$29,037.46

To this amount is added Respondents' "adjustment for pertinent factors" (which can not be put on an annual basis), which *further increases* the amount awarded in excess of applicable Natural Gas Act ceilings.

Petitioner demonstrated to the Louisiana courts that a rate increase for all Respondents up to the maximum ceiling rates amounted to approximately $1,600,000. The May 17, 1979 judgment of the Louisiana trial court awarded Respondents a price increase of about $2,200,000, plus an upward adjustment of about $500,000 to account for "pertinent factors" and interest. The total judgment was in excess of $2,700,000.

E. Respondents' counsel did not argue in the Louisiana courts that the amount of the judgment granted as additional price for Respondents' gas under the contract was within the limits of the Commission's Regulations under the *Natural Gas Act*. Rather, their argument was based upon a claim (which counsel did not document and which we have been unable to substantiate) that the Louisiana courts had already decided the question adversely to Petitioner. This argument for Respondents is, in this Court and in the present posture of the case, entirely irrelevant; if in fact the Louisiana courts at any time or in any part of the proceedings in the case made any such ruling, it would constitute a gross and obvious error which surely should be corrected by this Court.

F. We do not repeat in this petition the argument in the petitions in No. 78-986 (and the current petition for rehearing) and in No. 78-1789, and refer the Court to those petitions as to the first three questions presented here.

VII. CONCLUSION

The Louisiana courts have, in the aspect of this case that is presented in this petition, awarded Respondents a rate for the wellhead sale of natural gas which grossly exceeds the rate prescribed for such wellhead gas by the Commission's regulations. The whole case, as set forth in the petition for a writ of certiorari in No. 78-986 (and the petition for rehearing of its denial), in No. 78-1789, and in the present petition, exhibits the complete frustration, by a series of decisions by the Louisiana courts, of the *Natural Gas Act* and its purposes and provisions.

We submit that the entire case as presented by the three petitions should be reviewed by this Court to vindicate the *Natural Gas Act* and its administration by the Federal commission and courts.

Respectfully submittted,

ROBERT ROBERTS, JR.
MARLIN RISINGER, JR.
W. MICHAEL ADAMS
BLANCHARD, WALKER, O'QUIN & ROBERTS
Post Office Drawer 1126
Shreveport, Louisiana 71163

Counsel for Petitioner.

Of Counsel:

REUBEN GOLDBERG
GLENN W. LETHAM
GOLDBERG, FIELDMAN & LETHAM, P.C.
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006

May, 1980

APPENDIX

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APPENDIX A

United States Code, Title 28.

§ 1257(3). STATE COURTS; APPEAL; CERTIORARI

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

APPENDIX B

CONSTITUTION OF THE UNITED STATES

Article VI, Clause II

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX C

[Judgment rendered January 22, 1980]

No. 14,012

COURT OF APPEAL SECOND CIRCUIT
STATE OF LOUISIANA

* * * * * *

FRANK J. HALL, ET AL, *Plaintiffs-Appellees*

VERSUS

ARKANSAS LOUISIANA GAS COMPANY, *Defendant-Appellant*

* * * * * *

Appealed from the First Judicial District Court for the Parish of Caddo, Louisiana

Honorable C. J. Bolin, Jr., Judge

* * * * * *

BLANCHARD, WALKER, O'QUIN & ROBERTS

By: Robert Roberts, Jr., Marlin Risinger, Jr., and W. Michael Adams

Attorneys for Defendant-Appellant, Arkansas Louisiana Gas Company

WIENER, WEISS, MADISON & HOWELL

By: James Fleet Howell

Attorneys for Plaintiffs-Appellees, Frank J. Hall, et al

* * * * * *

Before PRICE, MARVIN and JONES, JJ.

MARVIN, J.

On the original appeal of this case in 1978, we affirmed a judgment activating a *favored nation clause* in a 1952 gas purchase contract which escalated the price of interstate natural gas purchased from the several plaintiffs by defendant Arkla. Plaintiffs there claimed that damages should have been assessed from September 1961, when Arkla began paying a higher price to another seller (the United States), through the year 1975 when suit was brought.

We affirmed the lower court's determination that all plaintiffs except W. E. Hall were entitled to damages only from October 1, 1972 (when plaintiffs were excused by FERC from having to meet FERC requirements to obtain a price increase). W. E. Hall's demands were dismissed on an exception of no cause of action because he had executed an agreement on May 25, 1969, deleting the favored nation clause from his 1952 contract.

The original damage award to plaintiffs totaled more than $900,000. This amount was determined by comparing the price paid to plaintiffs and to the government (for gas and products extracted from the gas) for the entire period (1961-1975). The lower court then proportionately reduced the amount for the entire period to determine the amount for 1972-1975. We remanded because neither party had *pursued* the lower court's suggestion for expert assistance and had not provided the lower court with *means* to accurately reduce or extract the 1961-1975 data to facilitate determination of the damages for the 1972-1975 period.[1]

The Supreme Court granted writs and held in 1979 that the damages for all plaintiffs, except W. E. Hall, should be measured from September 1961 through 1975 and that W. E. Hall should be allowed damages for the period from September 1961 until May 25, 1969 (when he executed the

---

[1] 359 So.2d 255 (La. App. 2d Cir. 1978).

agreement deleting the most favored nations clause from his contract). The Supreme Court "remanded to the district court for assessment of damages in accordance with [its] . . . views . . ." [2]

On remand, the district court apparently considered that the computations and summaries used by the court in originally assessing damages for the 1961-1975 period, and which were contained in the original record and generally approved by us on the original appeal, provided a sufficient evidentiary basis for it to determine the damages to plaintiffs for that period. The district court allowed Arkla to present evidence on remand only as to the damages sustained by plaintiff W. E. Hall for the period 1961 to May 25, 1969.[3]

After remand, the lower court awarded W. E. Hall $160,507.83 and the remaining plaintiffs a total of $2,738,-888.40, which was approximately the amount the trial court reduced on the original trial to compute damages for the 1972-1975 period. Arkla appeals this judgment, contending that the award to the remaining plaintiffs exceeds both the amount paid by Arkla to the United States during the period and the maximum ceiling rates for natural gas allowed by FERC during the period, all in violation of the contract and in violation of the Natural Gas Act (15 U.S.C. § 717 a-w). Plaintiffs seek additional damages, contending that Arkla's appeal is frivolous.

---

[2] 368 So.2d 984 (La. 1979).

[3] As we noted in the original appeal, Arkla was in a superior position to compile and present evidence of the difference in price paid to plaintiffs and to the *favored nation* (the United States) during the period and to compare the pertinent factors upon which the difference in price could be determined. We also noted that neither the plaintiffs nor Arkla pursued the lower court's suggestion that perhaps an expert should be appointed to assist in determining the damages. Again we mention that the pleadings and testimony fill 26 volumes of almost 5,000 pages and that the record includes almost 500 exhibits, some of which are voluminous.

The central issue in this appeal involves the sufficiency of the evidence used in comparing the difference in the price provisions of the two contracts, one contract being the gas purchase contract in 1952 containing the favored nation clause, and the other being the lease contract with the United States of America in 1961, payments under which have been construed as activating the favored nation clause of the other contract.

Under the 1961 lease, Arkla paid the government for the value of liquid hydrocarbons extracted from the natural gas and for the dry (residue) gas remaining after the extraction. Under the 1952 gas purchase contract with plaintiffs Arkla purchased "production from all wells . . . completed as commercially productive of natural gas" subject to the several terms and conditions of the contract. Section 8 of the contract, sub-part D of which contains the most favored nation clause, stipulated the price to be paid for each MCF of gas delivered to Arkla, but recognized that the stipulated price included an additional $.0025 per MCF to compensate the seller for the surrender of rights to receive the value of the LHC extracted by processes *after* delivery to Arkla. Section 8(B) apparently would allow the seller to extract condensate by a separator at the well *before* delivery to Arkla. Section 9 gives Arkla the option of purchasing free condensate that may be produced and recovered from the well by separators and obligates Arkla to pay for such condensate at a "posted" price. This section contains no language relieving Arkla of its obligation to pay the seller for the free condensate even if the condensate is delivered into Arkla's gas gathering lines and then later extracted. Some of the provisions of §§ 8 and 9 are reproduced below:

"8. PRICE

"(A) (1) The price to be paid by Buyer for each one thousand cubic feet of gas delivered hereunder to Buy-

er, on the basis of measurement and calculations hereinafter provided, shall be as follows:

"(a) $0.06997 from the effective date hereof through May 31, 1955;

* * * [graduated to]

"(e) $0.10596 from June 1, 1970, through May 31, 1975;

"(f) $0.11496 during the remainder of the time this agreement shall be in force and effect.

* * *

"(B) The prices . . . paid by Buyer to Seller shall constitute full payment for all gas delivered hereunder and also for all liquifiable hydrocarbons and other products delivered with such gas, it being understood and agreed that any and all products whatsoever recovered or recoverable from the production delivered hereunder by means of any type of processing operation subsequent to delivery shall be the property of Buyer or its assign without any obligation to make further payment to Seller for such products, it being further understood and agreed, however, that nothing herein is intended to deprive Seller of the right to operate a standard type oil field separator at each well subject hereto in order to remove such condensate as may be thereby extracted prior to delivery of production hereunder to Buyer. *The parties take cognizance of the fact that the aforesaid prices hereinabove provided to be paid are $0.0025 per MCF higher than would have been provided had Seller retained the right to participate in the recovery of products by such processing operations subsequent to delivery, and accordingly the aforesaid prices have been calculated and agreed to by the parties with the intention and understanding that payment of the said prices shall constitute payment for all products whatsoever recov-*

erable from the production delivered to Buyer hereunder.

"(C) If in accordance with the provisions of Paragraph (B) of Section 4 of this contract, Buyer dehydrates the gas delivered hereunder, then Seller shall pay to Buyer as a dehydration charge the sum of $0.002 for each one thousand cubic feet of gas dehydrated, which dehydration charge may be deducted by Buyer from remittances due Seller hereunder.

"(D) If at any time during the term of this agreement Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Gas Field *at a higher price than is provided to be paid for gas* delivered under this agrement, then in such event the price to be paid *for gas* thereafter delivered hereunder shall be increased by an amount equal to the *difference between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract; provided* that in determining whether a given price is in fact 'higher' than the price provisions of this contract, *the inquiry shall not be limited to the actual prices stipulated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts, such as point of delivery, basis of measurement, taxes, dehydration, and delivery pressures* (provided that the number of years stated as the terms during which the two contracts shall respectively remain in force and effect shall not be a factor to be considered for purposes of comparison under this paragraph) and the price to be thereafter payable in accordance with this paragraph for gas delivered hereunder *shall be adjusted accordingly insofar as may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts.* It is agreed that any

such higher price for gas delivered hereunder shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the effective date of such subsequent contract, all subject, however, to any rules and regulations of the Office of Price Stabilization or any other regulatory body having jurisdiction.

"9. CONDENSATE. *Buyer,* or its assign, *shall have the option* from time to time and upon sixty (60) days' notice, *of purchasing* all of the *free condensate* that may be produced from the subject wells and *which may be recovered* or recoverable *by the use of separators* operated in connection with such wells, and measured by liquid meter, or liquid gas ratio tests as hereinafter set forth, *and shall accept delivery of such condensate into the gas gathering lines or* at Seller's option *from Seller's storage tanks* located on the leases. Buyer, or its said assign, shall deliver to Seller written notice of the exercise of its said option and may discontinue the purchase of condensate by giving Seller sixty (60) days' written notice that it no longer desires to purchase same.

* * *

"*Buyer shall pay* or cause to be paid *to Seller,* for condensate received in accordance with the provisions of this Section, *the price posted by Buyer* or its said assign, as the case may be. Provided, however, that such posted price shall be in line with the prices established by the majority of major oil companies for similar grade condensate in fields in North Louisiana."

Emphasis by the Court.

Arkla insists that the FERC ceiling on gas, whether *wet* (before extraction of LCH [liquid hydrocarbons]) or *dry* (after extraction of LHC) is the sole basis upon which damages should have been assessed and that the price it

pays or paid to the United States for the extracted LHC is not a factor to be considered. Arkla argues that consideration of the price it pays or paid to the United States for LHC ignores and is in the face of the express language of plaintiffs' 1952 gas purchase contract that plaintiffs sold to Arkla only wet gas. The crux of this case is not that plaintiffs sold wet gas, but consideration of the purpose of the favored nation clause, the fact that a portion of the stipulated MCF price for gas under the 1952 contract (¼ cent) was for LHC, and the decisions of state and federal authorities in this controversy that the price Arkla paid the United States for LHC is a "pertinent factor" to be used under section 8 of the 1952 contract in interpreting the favored nation clause and in determining the difference in the price provision of the two contracts. The price provisions can be and have been compared.

Again we determine that for the purpose of giving effect to the favored nation clause—section 8 of the contract, the higher price the United States began to receive from Arkla in 1961 for gas and for LHC is the basis upon which to assess and measure the amounts plaintiffs should have begun to receive monthly from Arkla in 1961 for its gas and LHC. Arkla conditionally concedes as much in its first reply brief:

> "The values paid by Arkla to the United States for extracted plant products can and must be considered under this Court's May 1, 1978, judgment [359 So.2d 255 (La. App. 2d Cir.)] as a pertinent factor to determine the overall price paid to the government on a per Mcf basis. The Court has held that it is a pertinent factor and Arkla cannot attack that holding on this appeal. However, when the Court made that decision, the effect of the application of that pertinent factor on the Plaintiffs' monetary recovery was left to the Trial Court on remand. The Trial Court has considered the issues on remand and has rendered an award in its

> May 17, 1979, judgment, that is *again* grossly in error. This time, the [trial] Court failed to consider the limitations placed upon the award by the Natural Gas Act. The Plaintiffs award should be limited [to a total of $1,609,067.11] . . ."

We cannot agree that the trial court erred.

We reiterate that the purpose of the favored nation or price adjustment clause is to protect the seller under a long-term contract from price discrimination. A contract with favored nations provisions should be interpreted broadly, and not restrictively, to fully effect the provisions. 359 So.2d at p. 262. See also *Eastern Petroleum Company v. Kerr-McGee Corporation,* 447 F.2d 569 (C.A. 7th, 1971). Arkla paid the United States for gas and for LHC. Arkla paid plaintiffs for gas and LHC. Section 8(D) of plaintiffs' contract states that ". . . in determining whether [the price paid the United States for "gas"] is in fact 'higher' than the price provisions of [plaintiffs'] contract, the inquiry shall not be limited to the actual prices stipulated [for "gas"], but *due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts such as*

> point of delivery,
>
> basis of measurement,
>
> taxes,
>
> dehydration, and
>
> delivery pressure . . .

and the price to be thereafter payable [to plaintiffs] *shall be adjusted accordingly* insofar as *may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts . . . subject to any rules and regulations of . . . any . . . regulatory body having jurisdiction."*

We have again reviewed in the original record, summaries and the testimony of the plaintiff-expert at whose direction they were prepared. We do not depart from our 1978 observation.[4] We remanded in 1978, not because we thought that this evidence was deficient or suspect or that plaintiffs' recovery should be limited by the amount that Arkla paid the United States for its *dry* gas after LHC extraction. In the 1952 contract, *gas* includes LHC and the price provisions of the contract provide a price for both.

The lower court originally used the data summaries and testimony relating to the comparison of pertinent factors for the entire period (1961-1975) to determine damages for the 1972-1975 limited period that the lower court and we thought damages were owed.[5] The lower court propor-

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[4] In our 1978 opinion we observed that the plaintiff-expert

> ". . . gathered all of the pertinent data necessary to calculate damages . . . for the entire period . . . 1961 through . . . 1975. Based on the data obtained . . . schedules [were prepared to reflect a comparison in the price . . . paid . . . plaintiffs with that . . . paid to the United States . . . during this fourteen-year-period . . . [and] which related to the differential in the price of gas to the volumes sold by plaintiffs to defendant for the period. Built into these summaries are the adjusting factors . . . considered necessary to render the prices comparable. These summaries were . . . extended to calculate . . . interest on the sums claimed during the period."

359 So.2d at 264.

[5] We note that the FPC-FERC agreed with the original determination by the lower court and by this court that damages were due for the limited period 1972-1975:

• • •

"Prior to 1972 the Hall group did not hold small producer certificates. In the 'Order Denying Application for Rehearing' issued June 5, 1976, the FPC stated on p. 2, n. 1.:

> 'Prior to the filing of their small producer application, respondents, of course, as ARKLA contends, would be entitled under the Natural Gas Act only to the rate on

tionately reduced the damages for the 1961-1975 period ($2,800,000) by 68 percent to determine the damages for the 1972-1975 period ($900,000). We remanded because neither party had *pursued* the lower court's suggestion for expert assistance and had not provided the lower court with *means* to accurately reduce or extract the 1961-1975 data to facilitate determination of the damages for the 1972-1975 period. We were then, as we are now, satisfied that plaintiffs are entitled to have the favored nation clause

---

file with this Commission and in effect. See *Samedan Oil Corp., et al.*, 37 FPC 207, and cases cited therein.

"The FPC held that the producers were not entitled to a rate increase for the period prior to when they held small producer certificates since they had not filed for a rate increase as required by Commission regulation. The Louisiana Supreme Court, however, has awarded damages back to 1961. It concluded that it was Arkla's fault that the Hall group has not filed for a rate increase prior to 1972. The Louisiana court therefore deemed that the Hall group had fullfilled its obligation to file new rate schedules. On this basis the Louisiana Supreme Court awarded damages for the 1961 to 1972 period after the favored nation clause was found to have been triggered and before the Hall group received small producer certificates.

"It is our opinion that the Louisiana Supreme Court's award of damages for the 1961-1972 period violates the filed rate doctrine. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 349 U.S. 246, 251 (1951). This Commission, however, does not have the power to review what the state court has done. We note, however, that a petition for a writ of certiorari has been filed in the Supreme Court of the United States seeking review of the Louisiana Supreme Court's decision. *Arkla* v. *Hall*, Sup. Ct. No. 78-986, filed December 18, 1978."

Arkansas Louisiana Gas Company v. Frank F. Hall, et al, Docket No. RI-76-28, Order Declining Jurisdiction After Reconsideration of the Issue on Remand, issued May 18, 1979, footnote 18. See also footnote 20.

The U.S. Supreme Court denied certiorari on October 1, 1979.

interpreted to allow them an escalation of the amounts Arkla paid plaintiffs for gas (whether wet or dry) and for any extracted LHC (originally ¼ cent per MCF) determined by the price Arkla paid the United States for its gas (albeit dry) and for the extracted LHC. The Supreme Court of Louisiana agreed and FERC so understood.

> "The Louisiana courts found that the contract provided for a price for the [LHC] products removed from the gas severable from the price for the gas sold under the contract. The damages awarded for the actual natural gas, not including the severable payment for the products removed, was within the area ceiling rate."
>
> Footnote 19, FERC, May 18, 1979, cited supra in Footnote 5.

Section 8 of the 1952 contract, pertinent parts of which have been quoted, effectively states that the price Arkla pays for each MCF of *gas* includes ¼ cent for [LHC and] other products which may be recoverable from the gas. On the *basic contract question* (to use terminology frequently used by FERC) the effect of the lower court's finding, which we again approve, is that the contract shall be interpreted to entitle these plaintiffs to damages measured by what Arkla paid the United States for its gas *and* for LHC products severed from its gas. In effect Arkla paid the government and the plaintiffs for *wet* gas. The eventual price was determined by the MCF after extraction of LHC and by the price for the LHC. The price plaintiffs received for its gas after extraction of LHC and for the LHC was less than what the government received.

The 1952 contract provides that, once the favored nation clause is activated, the increase plaintiffs shall receive shall be ". . . an amount equal to the difference between *the price provisions* [of the 1952 contract] and the . . . higher *price provisions* of [the 1961 contract with the

United States] . . ." The price provisions of plaintiffs' contract and of the United States' contract have been compared and the difference has been determined. Plaintiffs should receive for their gas and for the LHC in the gas the higher amount the United States was receiving for its gas *and* the LHC in the gas. *Gas* in the 1952 contract includes the LHC. Each contract contains price provisions for gas and for LHC. When the price provisions of the two contracts, comparing the pertinent factors, are considered, plaintiffs are entitled to the damages assessed.

Plaintiffs are not entitled to damages for frivolous appeal. At Arkla's cost, judgment is AFFIRMED.

APPENDIX D

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

Office of the Clerk, Shreveport, Louisiana. February 29, 1980

As counsel of record in the captioned case, you are hereby notified that the application or applications for rehearing filed by Defendant-Appellant have this day been refused, en banc.

FRANK J. HALL, ET AL

versus

ARKANSAS LOUISIANA GAS CO.

Docket No. 14,012

Comments (if any were given by the Court):

Sincerely,

Harold L. Booth
Clerk of Court

cc:
Mr. James Fleet Howell
Wiener, Weiss, Madison & Howell
411 Commercial Bank Building
Shreveport, La. 71101

Blanchard, Walker, O'Quin & Roberts
Attorneys at Law
P. O. Drawer 1126
Shreveport, La. 71163

APPENDIX E

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

No. 67,225

FRANK J. HALL, ET AL

VS

ARKANSAS LOUISIANA GAS COMPANY

In Re: Arkansas Louisiana Gas Company, applying for Certiorari, or Writ of Review, to the Court of Appeal, Second Circuit, No. 14,012, Parish of Caddo.

May 2, 1980

Denied.

JCW

JAD

PFC

WFM

FAB

A TRUE COPY

Clerk's Office
Supreme Court of Louisiana
New Orleans

May 2, 1980

/s/ FRANS J. LABRANCHE, JR.
Clerk of Court

APPENDIX F

SUPREME COURT
STATE OF LOUISIANA

DOCKET No. 67,225

FRANK J. HALL, W. E. HALL, JR., MRS. W. E. HALL, SR., THE H. M. HARRELL TESTAMENTARY TRUST, JAMES E. HARRELL, JOHN K. HARRELL, SR., ASA BENTON ALLEN, SIDNEY G. MYERS, JR., W. O. COCHRAN, THOMAS F. PHILYAW, MRS. ELAINE ALLEN, JAMES A. NOE, D. B. MCCONNELL, MRS. EVA L. WEISS, SOL KAPLAN and NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS

Plaintiffs-Respondents

VS.

ARKANSAS LOUISIANA GAS COMPANY

Defendant-Applicant

Order

Upon consideration of the application of Arkansas Louisiana Gas Company, Petitioner, for stay of execution and enforcement of judgment, it is

ORDERED that execution of or any proceeding to enforce the judgment of this Court entered herein on May 2, 1980, and also the judgment herein of the Court of Appeal, Second Circuit, State of Louisiana, entered on the 22nd day of January, 1980, which affirmed the judgment of the First Judicial District Court entered May 17, 1979, be and the same is hereby stayed pending Petitioner's application to the Supreme Court of the United States for certiorari in this cause and the Court's consideration thereof. In the event the petition for certiorari is dismissed or denied, the stay shall be terminated automatically. In the event the petition for certiorari is granted, the stay shall con-

tinue pending issuance of the mandate of the Supreme Court of the United States.

New Orleans, Louisiana, this 9th day of May, 1980.

SUPREME COURT OF LOUISIANA

A TRUE COPY

/s/ FRANS J. LABRANCHE, JR.
Frans J. Labranche, Jr.
Clerk of Court

/s/ JOHN A. DIXON
Justice
Supreme Court of Louisiana

APPENDIX G

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

NUMBER 225,699

FRANK J. HALL, ET AL

VERSUS

ARKANSAS LOUISIANA GAS COMPANY

Judgment

The Louisiana Supreme Court in the case of "*Frank J. Hall, et al v. Arkansas Louisiana Gas Company,* Docket Number 62,560, Supreme Court of Louisiana" on March 5, 1979 rendered a judgment on the merits of this contractual dispute. The judgment of the Louisiana Supreme Court dated March 5, 1979 became effective on April 9, 1979 when the Louisiana Supreme Court denied Arkansas Louisiana Gas Company's "Application For a Rehearing".

IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the Judgment of the Louisiana Supreme Court dated March 5, 1979 and the evidence contained in the record of this case there be judgment herein in favor of the following Plaintiffs against the Defendant, ARKANSAS LOUISIANA GAS COMPANY, awarding to said Plaintiffs compensatory damages in the sums as hereinafter set forth for the actual losses caused by Arkansas Louisiana Gas Company's breach of contract from September, 1961 through December, 1975, to wit:

FRANK J. HALL	—$423,167.91
VIRGIL J. HALL, widow	— 115,409.27
CARLYLE W. URBAN, Trustee under Will of H. M. HARRELL	— 634,233.61

JOHN K. HARRELL, SR.	— 79,278.48
JAMES E. HARRELL	— 79,278.48
ELVA L. WEISS, widow	— 177,666.20
NATIONAL AMERICAN BANK, Executor under Will of SEYMOUR WEISS	— 177,666.20
T. F. PHILYAW	— 3,712.38
W. O. COCHRAN	— 14,513.62
D. B. McCONNELL	— 132,193.25
S. G. MYERS	— 130,215.91
JAMES A. NOE, JR. and C. T. MUNHOLLAND, Testamentary Executors under Wills of MR. & MRS. JAMES A. NOE	—$478,528.37
ASA BENTON ALLEN	— 67,282.56
ELAINE ALLEN	— 65,234.33

IT IS ORDERED, ADJUDGED AND DECREED that the above and foregoing Plaintiffs are awarded legal interest on $1,677,-168.06 of the above and foregoing compensatory damages from July 1, 1976 until paid and that the remaining damages, i.e. $901,212.51, shall not bear or accrue any legal interest whatsoever.

IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the Judgment of the Louisiana Supreme Court dated March 5, 1979 and the evidence contained in the record in this case there shall be judgment herein in favor of Mr. W. E. Hall, Jr., Plaintiff, against the Defendant, Arkansas Louisiana Gas Company, awarding to said Plaintiff compensatory damages in the sum as herein set forth for the actual losses caused by Arkansas Louisiana Gas Company's breach of contract from September, 1961 through May 24, 1969, to wit:

W. E. HALL, JR.	—$160,507.83

IT IS ORDERED, ADJUDGED AND DECREED that W. E. HALL, JR. is awarded legal interest on $97,208.42 of said compensatory damages from May 25, 1969 until paid and that $63,299.41 of the damages as awarded to Mr. W. E. Hall, Jr. shall not bear or accrue any legal interest whatsoever.

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs are awarded a recovery herein for all costs of this proceeding.

JUDGMENT READ, RENDERED AND SIGNED on May 17, 1979 at Shreveport, Louisiana.

ENDORSED FILED

W. C. YOUNG, Deputy Clerk

May 17, 1979

A TRUE COPY—Attest

/s/ W. C. YOUNG
Deputy Clerk

/s/ C. J. BOLIN, JR.
C. J. Bolin, Jr.
District Judge

APPENDIX H

Opinion No. 607

Area Rate Proceeding, et al. (Other Southwest Area),
Docket No. AR67-1, et al.

Upon consideration of the entire record in this proceeding, which includes public notice, public hearing with opportunity for the submission of oral and documentary evidence, for cross-examination, and for the submission of rebuttal evidence, initial decision by an Examiner, exceptions thereto, and oral argument before the Commission,

The Commission further finds:

(1) The Other Southwest Area comprises: (a) The State of Mississippi and the Federal domain offshore thereof; (b) Northwest Alabama, consisting of Marion, Fayette, Lamar and Pickens Counties; (c) Northern Louisiana, consisting of that portion of Louisiana lying north of the 31 degree parallel through Concordia, Pointe Coupee, Avoyelles, Rapides, and Vernon Parishes; (d) Texas Railroad Commission Districts Nos. 5, 6, and 9; (e) Other Oklahoma, consisting of Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Garvin, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburgh, Pontotoc, Stephens (except Carter-Knox Area), Tillman, Tulsa, Wagoner, Washington, Pottawatomie, Pushmataha, Rogers, Seminole, and Sequoyah Counties; (f) Northern Arkansas, consisting of Sevier, Howard, Pike, Clark, Dallas, Cleveland, Drew, and Desha Counties, and all other Arkansas counties north of this group; (g) Southern Arkansas, consisting of Little River, Hempstead, Miller, Lafayette, Nevada, Columbia, Ouachita, Union, Calhoun, Bradley, Ashley, and Chicot Counties, Arkansas.

(2) Each of the respondents [24] listed in Appendix A to this Opinion and order is, and at the time of all past sales with which we are here concerned was, a "natural-gas company" within the meaning of the Natural Gas Act and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of this Commission.

(3) Past, present, and proposed sales of natural gas to which the order herein applies are subject to the jurisdiction of this Commission.

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[24] Where the term "respondents" is used in the finding and ordering paragraphs hereinafter set forth, it is to be regarded as referring to all named respondents in the Commission orders issued in this case, and to all parties on whose behalf such named respondents have filed FPC gas rate schedules for sales of gas produced in the Other Southwest.

(4) Rates for all sales of natural gas, subject to the jurisdiction of the Commission by the producers in the Other Southwest area that are above the applicable area rates prescribed herein, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act and should be disallowed, and refunds should be required as hereafter provided.

(5) The just and reasonable rates for past, present, and prospective sales of natural gas to which this order applies are the applicable area rates set forth in ordering paragraphs (A) and (B) below.

(6) Rates in excess of the applicable just and reasonable rates determined herein are in that respect unjust and unreasonable.

(7) It is necessary and appropriate to carry out the provisions of the Natural Gas Act that the Commission adopt the orders and regulations herein prescribed.

(8) Except as herein granted the exceptions to the initial decision and proposed order should be denied.

Acting pursuant to Sections 4, 5, and 16 of the Natural Gas Act (52 Stat. 822, as amended, 823, 830; 15 U.S.C. 717c, 717d, 717o) and Sections 553, 556, and 557 of Title 5 of the United States Code (The Administrative Procedure Act, 60 Stat. 238, 239. 241, 242, as codified September 6, 1966, by 80 Stat. 383, 384, 386, 387),

The Commission orders:

(A) Part 154 of the Commission's Regulations under the Natural Gas Act, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding a new Section 154.109a reading as follows:

Part 154—Rate Schedules and Tariffs.

* * * * * * *

§ 154.109a Area Rates—Other Southwest area.

(a) From and after January 1, 1972, and prior to July 1, 1976, no rate or charge made, demanded or received under a rate schedule filed pursuant to this Part for gas produced in the Other Southwest area shall exceed the applicable area rate prescribed by this section except in compliance with a specific order of the Commission.

(b) Applicable area rate means the base area rate established in paragraph (e) adjusted to the extent required by paragraph (d).

(c) *The Base Area Rates.* The following base area rates per Mcf (at 14.65 psia unless otherwise noted) are hereby established for the period from January 1, 1972, to July 1, 1976, subject to the adjustments provided in paragraph (d), for gas gathered and delivered by the seller at either a central point in the field, the tailgate of a plant or

point on the buyer's pipeline, or an offshore platform to the buyer's line, by the following:

(1) Gas sold under contracts dated prior to October 1, 1968:

	From Jan. 1, 1972, through Sep. 30, 1973	Beginning Oct. 1, 1973
Other Oklahoma	19.4	20.4
Texas Railroad District No. 9	19.7	20.7
Northern Arkansas	18.8	19.8
Texas Railroad District No. 6	19.1	20.1
Narthern Louisiana (at 15.025 psia)	20.6	21.6
Southern Arkansas	18.25	19.25
Mississippi and Alabama (at 15.025 psia)	20.0	21.0

(2) Gas sold under contracts dated on or after October 1, 1968:

	From Jan. 1, 1972 through Sept. 30, 1974	Beginning Oct. 1, 1974
Other Oklahoma	23.75	24.75
Texas Railroad District No. 9	24.0	25.0
Northern Arkansas	23.0	24.0
Texas Railroad Districts Nos. 5 and 6	23.5	24.5
Norther Louis ana (at 15.025 psia)	25.0	26.0
Southern Arkansas	22.5	23.5
Mississippi and Alabama (at 15.025 psia)	25.0	26.0

	From Jan. 1, 1972, through Sept. 30, 1973	Beginning Oct. 1, 1973
Federal Domain Offshore of Mississippi	26.0	27.0

(3) The applicable area rate shall be adjusted downward, for gas delivered closer to the wellhead than a central point in the field, the tailgate of a plant, a point on the buyer's pipeline or an offshore platform on the buyer's line by the following:

Other Oklahoma, Texas Railroad District No. 9, and Northern Arkansas	1.5 cents per Mcf
Texas Railroad Districts Nos. 5 and 6, Northern Louisiana and Southern Arkansas	1.0 cent per Mcf
Mississippi and Alabama	1.25 cents per Mcf

(d) *Quality Standards and Adjustments to the Base Area Rates.* The base area rates established in paragraph (c) are subject to adjustment as follows:

(1) *Btu Adjustment*—For gas with more than the maximum standard of Btu's per cubic foot, at 60°F and 14.73 psia, upward adjustments shall be made on a proportional basis from a base equal to the maximum standard. For gas with less than the minimum standard of Btu's per cubic foot, at 60°F and 14.73 psia, downward adjustments

shall be made on a proportional basis from a base equal to the minimum standard. Measurement of Btu shall be on a wet basis. The applicable maximum and minimum standards are:

	Maximum	Minimum
Other Oklahoma, Texas Railroad District No. 9, and Northern Arkansas	1060	1000
Texas Railroad Districts Nos. 5 and 6, Northern Louisiana and Southern Arkansas	1030	1000
Mississippi and Alabama	990	950
Federal Domain Offshore of Mississippi	1050	1000

(2) The following additional quality standards shall apply:

(i) *Water Content*—The gas shall not contain in the aggregate more than seven pounds of water, either in the form of liquid or vapor, per million cubic feet of gas at 60°F and 14.73 psia (.007 lbs. per Mcf).

(ii) *Hydrogen Sulphide*—The gas shall not contain more than one grain of hydrogen sulphide per one hundred cubic feet of gas at 60°F and 14.73 psia (10 gr. per Mcf).

(iii) *Total Sulphur*—The gas shall not contain more than 20 grains of total sulphur per one hundred cubic feet of gas at 60°F and 14.73 psia (200 gr. per Mcf).

(iv) *Carbon Dioxide*—The gas shall not contain more than 3 percent by volume of carbon dioxide.

(v) *Other Impurities*—The gas shall contain no oxygen, dust, dirt, gum, or other impurity in sufficient amounts to require the buyer to incur processing costs to eliminate such impurities in order for the gas to meet either customary commercial standards or the customary requirements of any of the interstate pipelines in the area.

(vi) *Delivery Pressure*—The gas shall be delivered at a pressure sufficient to enter the buyer's pipeline except that a minimum of 500 psig must be available at the point of delivery.

(3) When a purchaser buys gas which deviates from the quality standards established in subparagraph (2) above, the base area rate shall be adjusted for any deviations from such standards as follows:

(i) The applicable area rate shall be adjusted downward by the net cost, actually incurred prior to ultimate consumption, of processing the gas to bring it up to standard.

(aa) If the processing is performed by the purchaser, a reasonable return upon the net investment should be included as part of the processing cost incurred in bringing the gas up to pipeline quality.

(bb) If such processing reduces the volume of the gas, the purchaser shall pay for only the volume remaining after processing.

(ii) In the case of delivery by seller of gas containing carbon dioxide in excess of the standards herein permitted, notwithstanding

anything to the contrary in Paragraph (2)(iv), the producers shall have the alternative of receiving payment for the total volume of gas delivered, including the carbon dioxide, providing that the Btu content of the gas is measured before the removal of the carbon dioxide for the purposes of the Btu adjustments specified in this order, or receiving payment for the volumes exclusive of the carbon dioxide with the Btu measured by the volumes of gas only.

(e) Prior to July 1, 1976, any seller seeking to charge a rate in excess of the applicable area rate or requesting a change in the applicable area rate must file a petition for waiver or amendment of this section pursuant to Section 1.7(b) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(b)) fully justifying the relief sought in the light of this Opinion and order. Prior to July 1, 1976, the seller may not file any rate increase in excess of the applicable area rate herein prescribed unless and until the Commission grants the petition.

(B) For the purpose of computing refunds in all Section 4(e) proceedings now pending with respect to gas produced in the Other Southwest area, the following base area rates (at 14.65 psia unless otherwise noted) are hereby established, for gas gathered and delivered by the seller at either a central point in the field, the tailgate of a plant, or a point on the buyer's pipeline:

(1) Gas sold under contracts dated prior to January 1, 1961:

	Prior to Jan. 1, 1965	From Jan. 1, 1965, through Sept. 30, 1968	From Oct. 1, 1968
Other Oklahoma	17.5	18.4	19.4
Texas Railroad District No. 9	17.8	18.7	19.7
Northern Arkansas	17.0	17.9	18.8
Texas Railroad District No. 6	15.0	17.0	19.1
Northern Louisiana (at 15.025 psia)	16.7	18.6	20.6
Southern Arkansas	14.4	16.25	18.25
Mississippi and Alabama (at 15.025 psia)	19.0	19.5	20.0

(2) Gas sold under contracts dated from January 1, 1961 through September 30, 1968:

	Prior to Jan. 1, 1965	From Jan. 1, 1965, through Sept. 30, 1968	From Oct. 1, 1968, until Jan. 1, 1972
Other Oklahoma	18.4	18.9	19.4
Texas Railroad District No. 9	18.7	19.2	19.7
Northern Arkansas	17.8	18.3	18.8
Texas Railroad District No. 6	18.1	18.6	19.1
Northern Louisiana (at 15.025 psia)	19.6	20.1	20.6
Southern Arkansas	17.25	17.75	18.25
Mississippi and Alabama (at 15.025 psia)	19.0	19.50	20.0

(3) Gas sold under contracts dated on or after October 1, 1968:

Other Oklahoma	23.75
Texas Railroad District No. 9	24.0
Northern Arkansas	23.0
Texas Railroad Districts Nos. 5 and 6	23.5
Northern Louisiana (at 15.025 psia)	25.0
Southern Arkansas	22.5
Mississippi and Alabama (at 15.025 psia)	25.0

(4) The applicable area rate shall be adjusted downward, for gas delivered closer to the wellhead than a central point in the field, the tailgate of a plant, or a point on the buyer's pipeline in the same amounts provided in such cases in paragraph (c)(3) of Section 154.109a as added by ordering paragraph (A) hereof, to Part 154 of the Commission's Regulations under the Natural Gas Act, and shall be subject to the same quality standards and adjustments as provided by paragraph (d) of said Section 154.109a.

(C) The applicable area rates as defined in ordering paragraph (A) above, shall be effective from and after January 1, 1972 and any amounts collected in excess thereof on or after that date shall be subject to refund plus interest at 7 percent. In addition, with respect to the rates involved in Section 4(e) proceedings set out in Appendix A, the applicable area rate as defined in paragraph (B) above, shall be effective from the date such Section 4(e) rates were collected subject to refund and all amounts collected under those Section 4(e) rates prior to the effective date of this Opinion in excess of the applicable area rate shall be subject to refund, plus interest at the rate specified in the respective Section 4(e) proceeding, in accordance with the provisions of ordering paragraphs (E) and (F) herein; provided, however, that with respect to such 4(e) dockets no refunds are required below the rate allowed in a final, unconditional permanent certificate previously granted for such sale.

(D) By February 1, 1972 each respondent shall file a supplement to each applicable rate schedule, effective as of January 1, 1972, reflecting any reductions required to bring any or all of its rates into conformity with the applicable base area rates established by ordering paragraph (A) herein. The timely filing of a completed statement in conformity with Appendix D hereto shall constitute compliance with this paragraph (D).

(E) Each person having on file with this Commission a rate schedule with regard to gas produced or sold within the Other Southwest area, or hereafter filing such a rate schedule (including a contract or amendment adding acreage or new reserves) shall, with regard to such rate schedule or amendment, file by February 1, 1972, or within 90 days from the date of first delivery under the rate schedule or amend-

ment, whichever is later, a statement in conformity with Appendix D hereto. All statements herein required shall be signed by both the seller and the purchaser. If the seller and the purchaser are unable to agree upon any or all of the particulars entering into the computation of the applicable area rate, the seller shall file the statements herein required which shall indicate the absence of agreement and supply the information required to compute the applicable area rate as well as the contentions of the parties with respect to the quality and amount of the adjustment for any item in dispute. The purchaser may file a separate statement setting forth its views within the period herein provided.

(2) The statement filed hereunder which reflects full agreement between the seller and purchaser shall be deemed accepted by the Commission unless the Commission, within 120 days after such filing, shall otherwise order. In the event of disagreement between the seller and purchaser or, where the Commission otherwise determines that the statement filed is inconsistent with the provisions of ordering paragraph (A) herein, the Commission will after appropriate proceedings, prescribe the applicable area rate to be applied.

(3) Any respondent will be exempt from filing the statement required by subparagraph (1) hereof for any sales which are "small producer sales" as defined in the Commission's Regulations under the Natural Gas Act if a producer seeks to qualify thereunder. If the Commission subsequently finds that such a producer does not qualify as a small producer such applicant shall be required to file the statement required by subparagraph (1) hereof within 90 days after any such Commission finding.

(F) *Refund Reports.* By February 1, 1972, refund reports shall be filed with this Commission in triplicate, and one copy served on the buyer, by each respondent involved in one or more of the Section 4(e) proceedings set out in Appendix A and as to which refunds are required under the terms of this decision. Within 20 days from the filing of the refund report the buyer shall file its written concurrence or disagreement with such report. Each producer within 30 days of filing a refund report shall notify each working interest owner under each rate schedule of any refunds, including interest, applicable to its gross interest. The report shall set forth the following information (if more than one rate schedule is involved the respondent shall supply the information for each schedule separately):

(i) The rates collected during the period subject to refund, and the periods during which each rate was collected.

(ii) The volume of gas sold at each such rate.

(iii) The difference between the total amount collected during the period subject to refund and the amount that would have been col-

lected at the applicable area rate as defined herein subject to the proviso of ordering paragraph (C).

(iv) The computation of the applicable area rate and the basis for any difference between it and the base area rate.

(v) The interest, at rates as specified in each Section 4(e) proceeding, on the above refundable excess revenues, subject to the limitation by Section 154.102(f) of the Commission's Regulations under the Natural Gas Act. The interest shall be calculated to the date of the refund report.

(G) *Treatment of Refunds.* Each respondent shall retain the amounts shown in the report required under ordering paragraph (F) subject to further order of the Commission directing the disposition of those amounts. If a respondent elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it is authorized so to do after notice to the Commission; and it shall pay interest thereon at the prime rate, in effect as of 12:00 noon on the date of issuance of this Opinion and order for loans made by the Chase Manhattan Bank, on all funds thus available from the effective date of this order to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission. If a respondent elects to deposit the retained funds in a special escrow account, the respondent shall make such deposit and shall comply with the escrow agreement requirements of Section 250.12 of the Regulations under the Natural Gas Act (18 CFR 250.12). Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the escrow agreement shall be deemed to be satisfactory and to have been accepted for filing.

(H) The provisions of Section 154.63 of the Commission's Regulations under the Natural Gas Act are waived to permit pipeline companies to file rate increase applications to track producer rate increases filed pursuant to the provisions of this order; such tracking applications may be filed by pipeline purchasers or by pipelines purchasing from such pipeline purchasers which are not authorized to track rate changes of their suppliers with regard to gas from Other Southwest, provided that pipelines filing such an adjustment submit working papers with the filing showing the computation thereof, and, provided further, that the rate or rates as revised by such rate increase applications shall be collected subject to reduction and refund from the effective date of such increased rate or rates.

(I) Section 2.52, Part 2, General Policy and Interpretations, of the Commission's General Rules is waived so as to permit the filing of a rate increase application to track producer rate increases filed pursuant to the provisions of this order by a pipeline purchaser or by a pipeline purchasing from such a pipeline purchaser where the pipe-

lines has a proposed increased rate or rates under suspension at the time of such tracking application.

(J) The procedures for establishing and revising the amount of reserves in new dedications, and the reports required, will be established by later order of the Commission.

(K) These proceedings shall remain open for such further action as may be necessary with respect to individual respondents and such other action as may be necessary in the premises.

(L) The Secretary of the Commission is authorized to accept filings of rate changes and quality statements made in accordance with this Opinion and order.

(M) Except as herein granted the exceptions to the initial decision and proposed order are hereby denied.

(N) The Secretary shall cause prompt publication of the findings and ordering paragraphs, together with notice of the availability of this entire Opinion, to be made in the Federal Register.

(O) This order does not relieve any of the Applicants herein of any responsibility imposed by, and is expressly subject to, the Commission's Statement of Policy Implementing the Economic Stabilization Act of 1970 (P.L. 91–379, 84 Stat. 799, as amended by P.L. 92–15, 85 Stat. 38), including such amendments as the Commission may require, and Executive Order No. 11615.

APPENDIX A

PART I

RESPONDENT INDEPENDENT PRODUCERS [1]

Adams, N. L., Sr.
Alexander, C. W.
Alexander, E. B., Jr.
Allied Materials Corp.
Alston, Francis H.
Amax Petroleum Corp.
A'Mell Oil Properties
Amerada Hess Corp.
Americana Oil & Gas Properties of Texas, Inc.
American Exploration Development Corp.
American Petrofina, Inc.
American Petrofina Co. of Texas
American Realty and Petroleum Corp.
American Trading and Production Corp.
Anadarko Production Co.
An-Son Corp.
Anderson, Jacqueline
Anderson Petroleum
Andrewski, H. C. & Gertrude B.
Anisman, M., Trustee
Anisman, Morris
Apache Corp.
Apco Oil Corp.
Argo, M. M.
Arkla Exporation Co.
Arrington, J. H.
Ascher, M.

[1] All persons named herein and all parties on whose behalf such persons have filed FPC gas rate schedules for sales of gas produced in the Other Southwest Area are respondents in this proceeding, including their successors and assigns. See page 938, *infra*, for listing of company name changes.

APPENDIX I

FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF CADDO,
STATE OF LOUISIANA

NUMBER 225,699

FRANK J. HALL, ET AL.

VS.

ARKANSAS LOUISIANA GAS COMPANY

Motion to Reopen Record

Filed May 15, 1979

NOW INTO COURT, through undersigned counsel, comes Defendant, ARKANSAS LOUISIANA GAS COMPANY ("Arkla"), and moves the Court to reopen the record in the above-entitled and numbered cause on remand from the Louisiana Supreme Court in order to receive additional evidence, as more particularly set forth below:

1.

In a judgment rendered May 1, 1978, this Court's original judgment rendered December 5, 1977, was set aside and the case was remanded for a new trial in accordance with the views expressed in the opinion of the Court of Appeal, *Hall v. Arkansas Louisiana Gas Company,* 359 S.2d 255 (La. App. 2nd Cir. 1978).

2.

By judgment rendered March 5, 1979, the Louisiana Supreme Court amended the judgment of the Court of Appeal in order to expand the recovery of the Plaintiffs for the period September, 1961, through December 31, 1975, with Plaintiff W. E. Hall's recovery limited to the period September, 1961, through May 24, 1969. *Hall v. Arkansas Louisiana Gas Company,* 368 So.2d 984 (La. 1979).

3.

The order issued by the Court of Appeal on May 1, 1978, remanding the case for a new trial was not altered by the Louisiana Supreme Court, the Court of Appeal judgment being only amended for the purpose of expanding the period of recovery for the Plaintiffs. Accordingly, the order of the Court of Appeal remanding the case for a new trial still stands.

4.

On remand from the Louisiana Supreme Court, and in accordance with the Court of Appeal opinion, Arkla requests that the Court reopen the record in order to allow submission by Defendant of testimony regarding the following:

(1) Evidence relating to the per Mcf price increase claimed by the Plaintiffs (and to be awarded in accordance with the judgment submitted by the Plaintiffs) and the extent to which the total price claimed by Plaintiffs exceeds the maximum lawful area or ceiling rates established by the Federal Power Commission (now the Federal Energy Regulatory Commission) under the Natural Gas Act, a summary of such evidence being contained in Exhibits A through K attached hereto and made a part hereof;

(2) Evidence relating to the proper allocation of the claim of Plaintiff W. E. Hall, Jr., said evidence being summarized on Exhibit A attached to and made a part hereof.

5.

Should the Court deny Defendant the right to submit additional testimony, then the Court should allow the Defendant to make a complete record of such testimony as a proffer of proof; and, should the Court deny Defendant the right to make the proffer of proof on the record, then the Court should allow the Defendant to make a state-

ment setting forth the nature of the evidence, all in accordance with Louisiana Code of Civil Procedure, Article 1636.

WHEREFORE, DEFENDANT, ARKANSAS LOUISIANA GAS COMPANY, PRAYS that this Court enter an order reopening the record of this cause for the submission into evidence the testimony described in Paragraph 4 hereinabove.

IN THE ALTERNATIVE, and only in the event the Court denies Defendant the right to submit additional testimony, then the Court should allow Defendant to make a complete record of its submission as an offer of proof in accordance with Article 1636 of the Louisiana Code of Civil Procedure.

IN THE FURTHER ALTERNATIVE, and only in the event the Court denies Defendant's Motion to Reopen Record, then the Court should permit Defendant to make a statement in the form of Exhibits A through K attached hereto and made a part hereof setting forth the nature of the evidence offered and such statement should be filed in the record of the above-entitled and numbered cause.

DEFENDANT FURTHER PRAYS for all orders and decrees necessary in the premises and full, general and equitable relief.

BLANCHARD, WALKER, O'QUIN & ROBERTS

Robert Roberts, Jr.
Marlin Risinger, Jr.

By /s/ W. MICHAEL ADAMS
W. Michael Adams

15th Floor, First National Bank Tower
Post Office Drawer 1126
Shreveport, Louisiana 71163

ATTORNEYS FOR DEFENDANT, ARKANSAS LOUISIANA GAS COMPANY

APPENDIX J

Exhibit A

Statement of Defendant Setting Forth Summary of Evidence Sought to be Admitted on New Trial

If Defendant were allowed to present evidence on a new trial, Mr. W. W. McLeod, Supervisor of Gas Accounting for Arkansas Louisiana Gas Company, would testify regarding the following matters and would offer into evidence accompanying his testimony the documents identified:

1.

Mr. McLeod has testified on behalf of Defendant in this case during the trial hereof in 1976 and 1977 and he is familiar with the exhibits offered by the Plaintiffs in this case with respect to the calculation of Defendant's monetary liability in the case.

2.

He is particularly familiar in this regard with Plaintiffs' exhibits P-318, P-318-A, P-319, P-320, P-321-A through P-321-Q, P-322-A through P-322-H, P-322-I through P-322-M, P-323, and P-331.

3.

Attached to this statement are Exhibits B through K which set forth certain information with respect to each Plaintiff or each group of Plaintiffs, said information having been derived from Plaintiffs' exhibits, as more particularly described below:

(A) The first column of each exhibit represents the time period of Plaintiff's recovery.

(B) The second column of each exhibit represents the volume produced in thousand cubic feet (Mcf) attributable to each Plaintiff's interest. These figures

are derived from Column No. 2 on Plaintiffs' Exhibit P-322-I.

(C) Column No. 3 represents the total amount of the price increase claimed by Plaintiffs for each time period specified. This information is derived from Column No. 7 on Plaintiffs' Exhibit P-322-I.

(D) In order to obtain in Column No. 4 the per Mcf price increase claimed by the Plaintiffs, the total price increase in Column No. 3 is divided by the volume produced in Column No. 2.

(E) Column No. 5 represents the per Mcf price paid by Defendant to Plaintiffs and is the base price set forth in the contract, Plaintiffs' Exhibit P-1, for the applicable time period, and is also set forth on Plaintiffs' Exhibit P-319-A.

(F) The total per Mcf price claimed by the Plaintiffs in Column No. 6 is obtained by adding Column Nos. 4 and 5.

(G) At the bottom of each of the Exhibits B through K attached hereto, the total price increase for all of the years for each Plaintiff is shown. The Plaintiffs' "First, Second and Third Adjustments" (Exhibit P-322-M) and the Plaintiffs' "Credit for Pertinent Factors" (Exihbit P-320-B) result in a net increase of the total price increase claimed which results in the total judgment claimed by each Plaintiff as shown on Exhibit P-320-B (and as claimed in Plaintiffs' proposed judgment).[1] The total per Mcf price increase shown in Column No. 5 of each of the Exhibits B through K does not include an increase in the Plaintiffs' award based on these adjustments but only represents a per

[1] These figures with respect to the Hall interests (Exhibit B) do not reflect a reduction in the claim of W. E. Hall, Jr., by the limitation of his claim to the period September, 1961, through May 24, 1969.

Mcf price claim based on the price differences shown on Plaintiffs' exhibits, less interest.

4.

The maximum lawful area base ceiling rates for the Northern Louisiana area during the period of recovery can be outlined as follows:

(A) For the period 1961 through 1971, the Federal Power Commission used guideline rates pursuant to its Statement of General Policy No. 61-1, 24 FPC 818 (1960). The guideline maximum lawful price for this period for sales of gas made in interstate commerce in Northern Louisiana (which would cover the Sligo Gas Field, Bossier Parish, Louisiana) was *$0.14 per Mcf* at 15.025 psia.

(B) In an order issued February 28, 1967, 37 FPC 400, the Commission instituted its area rate proceeding to determine just and reasonable rates for jurisdictional sales of natural gas by independent producers in what is designated as the "Other Southwest Area," which includes the Sligo Gas Field, Bossier Parish, Louisiana.

(C) On October 29, 1971, the Federal Power Commission issued Opinion No. 607 in the Other Southwest Area rate proceeding, 46 FPC 900 (1971).

(D) Many producers had filed for rate increases which were suspended by the Commission pending the Commission's determination of the area rate for the Other Southwest Area. With respect to proceedings pending at the time of the issuance of Opinion No. 607 and for the purpose of computing refunds due by producers who collected rates in excess of the rates specified below, the following rates were set in the Commission 1971 order solely for the purpose of deter-

mining refund obligations in rate increase proceedings then pending at the Commission:

For gas sold and delivered at the wellhead under contracts dated prior to January 1, 1961, the applicable rates were as follows:

For Gas Delivered Prior to 1/1/65	For Gas Delivered From 1/1/65-9/30/68	For Gas Delivered From 10/1/68-1/1/72
16.7¢	17.6¢	19.6¢

(E) The above prices were for the sole purpose of calculating refunds due on gas previously sold at prices collected under refund obligations in pending rate cases at the FPC. With respect to sales of gas delivered on and after January 1, 1972, the Commission prescribed the following just and reasonable area rates for gas sold and delivered at the wellhead under contracts dated prior to October 1, 1968:

From 1/1/72-9/30/73	Beginning 10/1/73
19.6¢	20.6¢

(F) An analysis of the Exhibits B through K attached hereto shows that the total price per Mcf claimed by Plaintiffs for each time period for each Plaintiff is in excess of the maximum lawful price that could be lawfully charged and paid under the Natural Gas Act.

5.

Mr. McLeod would also testify that he has reviewed the computations contained in the "Brief in Support of Plaintiffs' Motion for Adoption and Implementation of Final Judgment of the Louisiana Supreme Court" filed on April 18, 1979, and that the computations are incorrect, particu-

larly with reference to the calculations regarding the allocation for Plaintiff W. E. Hall contained on pages 10 and 11 of said brief.

Mr. McLeod would compute Plaintiff W. E. Hall's allocation as follows:

(A) W. E. Hall's claim for the period September, 1961, through May 24, 1969, based upon price differences as computed by the Plaintiffs for actual volumes delivered during the respective periods is $201,480.65 (this information is obtained from Exhibit P-347 and Exhibit P-322-I).

(B) From P-322-I Mr. McLeod would determine that 76.6 percent of the production for the entire period September, 1961, through December, 1975, occurred during the period September, 1961, through May 24, 1969.

(C) The total of Plaintiffs' adjustments for pertinent factors is $650,996.98. Applying 76.6 percent factor to that amount results in the amount of $498,663.69 adjustment for pertinent factors applicable to the period September, 1961, through May 24, 1969.

(D) Plaintiff W. E. Hall's percentage of the total damage claim for all Plaintiffs is 230,818.51/2,809,-199.08 which equals .08216524.

(E) Multiplying Mr. Hall's percentage of the claim times the amount of adjustment for pertinent factors applicable for the period September, 1961, through May 24, 1969,

$$.08216524 \times \$498,663.69 = \$40,972.82$$

results in $40,972.82 applicable to Mr. Hall's claim for the Plaintiffs' adjustment for pertinent factors.

(F) Then the total of W. E. Hall's claim as allocated would be as follows:

$201,480.65 - $40,972.82 = $160,507.83

(G) The Plaintiffs computations contained in their brief result in a claim of $172,552.37, resulting from an inconsistent allocation with respect to the adjustment for pertinent factors based on a ratio of time rather than a ratio of actual production. Based on Mr. McLeod's computation, Mr. W. E. Hall's claim should be limited to $160,507.83.